

Interplay of District Court Litigation and the PTAB



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Interplay of District Court Litigation and the PTAB

- Litigation Commenced: To File or Not to File?
- IPR Filed: Now What?
- Post-PTAB Decision: Next Steps?

Litigation Commenced: To File or Not to File?

- Evaluate Fintiv Factors
- Estoppel: Non-Petitioned References & Product Prior Art
- Claim Construction: Claim Terms & Inconsistent Positions

To File or Not to File: Why it matters

- Evaluate the likelihood that PTAB will deny institution
 - District Court Practices
 - District Court Schedules
 - Available Prior Art
 - Asserted Claims v. All Patent Claims
 - Stipulations
 - Other Lawsuits/PTAB proceedings – Same Patents
- Why it matters?

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To File or Not to File: Why it matters

PGR/IPR Fees through Filing of Petition

	Life Sciences	Electrical	Mechanical
Mean (Average)	211,000	136,000	134,000
10 th Percentile	65,000	58,000	56,000
Median (Midpoint)	225,000	120,000	120,000
90 th Percentile	425,000	213,000	220,000

Source: AIPLA 2021 Report of the Economic Survey at I-182, I-186, I-190

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